

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BCBSM, INC., d/b/a BLUE CROSS and
BLUE SHIELD OF MINNESOTA, on
behalf of itself and those similarly situated,

Plaintiff,

v.

VYERA PHARMACEUTICALS, LLC,
PHOENIXUS AG, MARTIN SHKRELI,
and KEVIN MULLEADY,

Defendants.

Case No. 1:21-cv-1884-DLC

DECLARATION OF ERIC J. MILLER

I, Eric J. Miller, being duly sworn, certify as follows:

1. I am the Senior Vice President of Case Management with A.B. Data, Ltd.'s Class Action Administration Division ("A.B. Data"). I submit this Declaration at the request of Robins Kaplan LLP ("Interim Lead Counsel") in connection with a proposed settlement (the "Settlement") in the above-referenced action (the "Daraprim Class Action"). This Declaration is based upon my personal knowledge and information provided by my associates and staff.

2. In consultation with Interim Lead Counsel, I have prepared a proposed Settlement notice plan for the Daraprim Class Action (the "Notice Plan"), as well as a plan for allocating settlement funds to Settlement Class Members (the "Plan of Allocation"). This Declaration will describe the proposed Notice Plan and Plan of Allocation and how they will meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

3. I have implemented and coordinated numerous large and complex class action settlement notice and administration plans. The scope of my work includes notification, claims processing, and distribution plans in all types of class actions, including but not limited to consumer,

antitrust, securities, ERISA, insurance, and government agency settlements. My experience includes more than 25 antitrust pharmaceutical class action settlements.

4. A.B. Data has also been appointed as notice, claims, and/or settlement administrator in hundreds of consumer, civil rights, insurance, antitrust, ERISA, securities, and wage and hour class action cases. A profile of A.B. Data's background and capabilities, including representative case and client lists, is included as Exhibit A to this Declaration.

5. The objective of the Notice Plan is to provide Settlement Class Members with the best practicable notice under the circumstances of the Settlement. The Settlement Class is defined as follows:

All entities that, for consumption by their members, employees, insureds, participants, or beneficiaries, and not for resale, indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Daraprim during the Settlement Class Period. Excluded from the Settlement Class are the following:

- (a) Natural person consumers;
- (b) Defendants and their employees, affiliates, parents, and subsidiaries, whether or not named in the Complaint;
- (c) All federal and state governmental entities except for cities, towns, municipalities, or counties with self-funded prescription drug plans;
- (d) Fully insured health plans (*i.e.*, health plans that purchased insurance covering 100% of their reimbursement obligation to members); and
- (e) Judges assigned to this case and any members of their immediate families.

Targeted Third-Party Payor ("TPP") Notice

6. A.B. Data maintains, and updates regularly, a proprietary database of approximately 42,000 entities that include insurance companies; health maintenance organizations; self-insured entities such as certain large corporations, labor unions, and employee benefit and pension plans; and certain record keepers, such as PBMs and third-party administrators (the "TPP Database"). Under the Notice Plan, the Short-Form Notice, attached as Exhibit B, formatted as a postcard, will

be sent via First-Class Mail directly to each entity in the TPP Database. In addition, A.B. Data will send the Short-Form Notice formatted by email to each entity in the TPP Database that has a known email address.

7. To reach TPPs and related entities, in addition to direct notice to TPPs and those entities, a banner ad campaign will be purchased on the following websites:

- ThinkAdvisor.com/life-health – This website is affiliated with the former publication *National Underwriter Life & Health*. It is uniquely positioned to provide insurance agents and brokers with timely, insightful information as they navigate the specialty insurance markets and sort through critical industry developments.
- SHRM.org - This website is the official website of the Society of Human Resource Management. The visitors to this website include HR management specializing in a variety of HR disciplines such as benefits, health insurance, compliance, and many others. It also reaches the HR management within large companies that offer private health insurance policies to their employees.
- BenefitNews.com – This website is affiliated with the publication *Employee Benefit News*. It serves human resource management personnel that specialize in determining and implementing benefits for employees, including health insurance.

All banner ads will include an embedded link to the case-specific website. Banner ads that are written specifically for this industry will be delivered on these websites.

Earned Media

8. A.B. Data also recommends that the Short-Form Notice be disseminated as a news release via *PR Newswire*'s US1 Newswire distribution list. This news release will be distributed via *PR Newswire* to the news desks of approximately 10,000 newsrooms, including those of print,

broadcast, and digital websites across the United States.

Toll-Free Telephone Number

9. A.B. Data will establish and maintain a case-specific toll-free telephone number to address inquiries from potential Settlement Class Members, with live operators during business hours. Services will specifically include the following:

- a. Inbound toll-free line;
- b. Interactive-voice-response system;
- c. Live operators during business hours;
- d. Call scripts developed by our experts and approved by Interim Lead Counsel; and
- e. Detailed reporting.

Case Website

10. A.B. Data will also implement and maintain a case-specific website for this matter. The website will provide, among other things, a summary of the case, all relevant pleadings and orders, important dates, and any pertinent updates concerning the Daraprim Class Action and the Settlement. A detailed Long-Form Notice, attached as Exhibit C, will be prominently posted on the case website and will include more detailed information about the Settlement and the Daraprim Class Action, including that this is a class action; the definition of the Settlement Class; the nature of the claims alleged; that a Settlement Class Member may appear through an attorney if the Settlement Class Member desires (at their own expense); an in-depth explanation of Settlement Class Members' rights and options including that Settlement Class Members can request to exclude themselves; the time and manner for requesting exclusion; and the binding effect of a class judgment.

Exclusion Processing

11. The Short-Form and Long-Form Notices will explain that Settlement Class Members may request exclusion by sending a written, mailed request to the Claims Administrator. A.B. Data will receive and process all requests for exclusion. A.B. Data will also promptly circulate to the parties copies of all such requests and a report that tracks each request and whether the required information was included.

Claim Processing and Distribution

12. In connection with administering the allocation and distribution of class action recoveries, A.B. Data is often involved in and has extensive experience in assisting with the design of claim forms and claims-processing requirement and accurately and efficiently processing claims. A.B. Data reviews claims in detail and in accordance with plans of allocation approved by a Court.

13. The methodology for the Plan of Allocation in this matter, which is set forth in Appendix A to Exhibit C, is typical in TPP pharmaceutical class actions. Claimants will be required to submit a Claim Form, attached as Exhibit D, providing the name and contact information for the Settlement Class Member, along with total amounts they indirectly paid or reimbursed for Daraprim in the Indirect Purchaser States¹ during the Settlement Class Period (and in certain instances documentation to support the total amounts claimed). As set forth in Appendix A to Exhibit C, the Net Settlement Fund will be distributed on a *pro rata* basis to Settlement Class Members who submit valid Claim Forms based on the amount that each claimant paid for Daraprim in the Indirect Purchaser States during the Settlement Class Period, in proportion to the total amount that all

¹ The 36 Indirect Purchaser States are: Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

eligible Claimants paid for Daraprim in the Indirect Purchaser States during the Settlement Class Period.

14. Claimants will be provided the option to submit their claims by mail or through a secure website. Any claimant that submits an incomplete claim will be notified by A.B. Data and allowed an opportunity to cure any deficient conditions existing within their claim.

Conclusion

15. It is my opinion that the Notice Plan described herein reflects a strategic and contemporary method of deploying notice to the Settlement Class and is adequate and reasonable to reach the Settlement Class Members effectively. Through a multi-media-channel approach to notice that includes digital banner ads and a targeted direct notice campaign, an estimated 80% of the target audience will be reached. This Notice Plan provides a reach similar to those that courts have approved and are recommended by the *Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*. The Notice Plan is the best practicable notice plan under the circumstances and is fully compliant with Rule 23 of the Federal Rules of Civil Procedure and due process. Further, the Plan of Allocation is fair and reasonable, and is typical in TPP pharmaceutical class actions of this type.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of January 2022.



Eric J. Miller
Senior Vice President, A.B. Data, Ltd.